

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**COMMUNITY PREMIER PLUS, INC.
Employer¹**

and

Case No. 2-RC-22233

**NEW YORK'S HEALTH AND HUMAN SERVICE
UNION 1199/SEIU, AFL-CIO
Petitioner**

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Leah Jaffe, a Hearing Officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record in this proceeding², it is found that:

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.

2. The parties stipulated and I find that Community Premier Plus, Inc. (CPP), a not-for-profit corporation and a health maintenance organization pursuant to Article 44 of the New York State Public Health Law with an office and place of business at 534 W. 135th Street, New York, New York, is engaged in the business of providing managed care health insurance to individuals who receive Medicaid or other public funding for

¹ As discussed below, the name of the employer set forth above reflects the party found to be the Employer in this matter.

their health insurance. Annually, CPP receives gross income in excess of \$1 million from Medicaid and other federally funded programs. Accordingly, based upon the stipulation of the parties and the record herein, I find that CPP is an employer engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated and I find that New York's Health and Human Service Union, 1199/SEIU, AFL-CIO, (the Petitioner) is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of CPP within the meaning of Section 9(c) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks to represent employees in the following unit:

Residual unit of Community Premier Plus Marketing Representatives employed by Presbyterian Hospital at all locations covered by the 1199 collective-bargaining agreement, including but not limited to the main hospital, WIC clinics and Allen Pavilion, excluding all other employees, guards, and supervisors, as defined by the Act.

Petitioner maintains that an election should be held to permit the 10 marketing representatives to vote as to whether they wish to be included in an existing unit of clerical employees employed by Presbyterian Hospital (Presbyterian). Although the petition designated Presbyterian as the Employer of the employees involved, during the hearing Petitioner amended its petition to set forth CPP as an alternate employer of the petitioned-for employees. In the alternative, Petitioner asserts that Presbyterian and CPP are together either a single employer or joint employers of the employees involved.

² Briefs were filed by the parties, and have been duly considered.

Presbyterian and CPP assert that CPP is the employer of the petitioned-for employees, and they dispute Petitioner's claim that Presbyterian is the employer or that Presbyterian and CPP are either joint employers or a single employer.

The Petitioner, Presbyterian, and CCP stipulated that the 10 marketing representatives, standing alone, would constitute an appropriate unit for collective bargaining.

CPP is a Health Maintenance Organization (HMO) whose enrollment consists of Medicaid eligible individuals. CPP is comprised of three corporate members/owners - 1) Presbyterian, 2) North General Hospital Corporation, and 3) NYC Health and Hospitals Corporation – Harlem Hospital.³ CPP was created, pursuant to Section 4403-A of the Public Health Law of the State of New York in order to provide HMO coverage to the Medicaid population in the geographic area served by the three corporate-member hospitals. The Board of Directors of CPP is structured such that any one of the three corporate members has veto power regarding decisions.

CPP's office is located at a location that is separate from the main buildings of Presbyterian. CPP has an "informal" lease arrangement⁴ with Presbyterian for the use of the space, which Presbyterian leases from another entity not involved in this proceeding. While the arrangement provides that Presbyterian will charge CPP rent for use of the premises, it has yet to bill CPP for rent, despite CPP's presence at Presbyterian's premises since October 1998.

³ The three corporate members made a capital contribution totaling \$5.3 million to form CPP, of which Presbyterian's contribution was approximately \$1.9 million.

⁴ The record does not contain evidence regarding the nature or form of the lease agreement.

The duties of the 10 marketing representatives consist primarily of seeking to enroll new members in CPP.⁵ Most of their work is performed “in the field” in a variety of settings where they can distribute information about the HMO to eligible individuals and seek to enroll them. CPP’s Director of Marketing interviews applicants for the marketing representative positions, and makes a recommendation to CPP’s President and CEO. After CPP approves of the hiring of an individual, and makes an offer of employment, it sends a letter to Presbyterian informing it of the offer, and stating that the applicant’s references were checked and were satisfactory. It appears that CPP sets salaries and determines other working conditions.

CPP and Presbyterian have an arrangement which provides that all payroll and personnel services are performed by Presbyterian. The marketing representatives receive health insurance and a pension plan through Presbyterian. CPP reimburses Presbyterian for salaries and benefits and also pays an administrative fee. According to CPP’s President, decisions regarding the hiring, firing, discipline and evaluation of the marketing representatives are made exclusively by CPP. Evaluations are signed by a CPP supervisor and the CPP Marketing Director. Some evaluation forms have only “Community Premier Plus” written on the top of the form, while others may say both “Community Premier Plus” and “Presbyterian Hospital.”⁶ Marketing representatives have identification cards that reflect both CPP’s and Presbyterian’s names. Marketing representatives received a CPP employee manual as well as one from Presbyterian.⁷ One of the marketing representatives rents an apartment in housing that is only available to Presbyterian employees.

⁵ The job description in evidence is signed by a CPP management official and by someone who, at the time it was signed, was a Presbyterian Human Resources Department official.

⁶ The evaluation form containing the names of both entities also has an extra line for the signature of CPP’s Executive Director.

⁷ The record is silent as to the formation, contents and/or application of these documents.

The Petitioner asserts that Presbyterian is either a joint, or single, employer with CPP. In deciding whether two companies are joint employers, the Board looks to whether the two companies “share [and] co-determine those matters governing the essential terms and conditions of employment.” *Quantum Resources Corp.*, 305 NLRB 759, 761 (1991). With respect to the issue of single employer, the Board uses the following criteria to determine whether two legally separate entities are in fact a single employer: 1) interrelation of operations, 2) common management, 3) centralized control of labor relations, and 4) common ownership or financial control. *Hydrolines Inc.* 305 NLRB 416, 417 (1991).

The record demonstrates that CPP is the Employer of the petitioned-for employees, and that it is not a joint employer with Presbyterian. It was not established that the entities “share [and] co-determine those matter governing the essential terms and conditions of employment,” as is required to establish joint employer. Instead, CPP controls all of the essential elements of the employment relationship with the marketing representatives. CPP has the exclusive authority to hire, discipline and fire the marketing representatives, and it oversees and evaluates their work. Although there are some indications of Presbyterian’s involvement with the marketing representatives’ employment – its name on ID cards, the distribution of a Presbyterian employment manual, and access to housing available to Presbyterian employees – these factors are insufficient to overcome the fact that CPP controls the essential elements of employment of the marketing representatives, i.e. their hiring, discipline, termination, and working conditions.

The factors necessary to establish single employer, mentioned above, also are not present here either. While Presbyterian, as a part owner of CPP, has a financial relationship with CPP, there is insufficient evidence to establish that it is a single or joint employer with CPP. Presbyterian owns only a one third interest in CPP. North

General Hospital Corporation and NYC Health and Hospitals Corporation – Harlem Hospital, parties not alleged by Petitioner to be joint or a single employer with CPP, are also owners. As for labor relations, CPP, not Presbyterian, has the authority to hire, fire and oversee the work of its employees. While payroll and personnel services are provided by Presbyterian, CPP reimburses Presbyterian for these services and therefore this aspect of the relationship appears to be at arms-length. Finally, while Presbyterian acts as CPP's landlord, the record revealed that CPP is responsible for paying rent to Presbyterian and that it will be billed for rent by Presbyterian.

Based on all of the foregoing, I find that there is insufficient evidence to establish that Presbyterian is 1) the employer, 2) a joint employer with CPP, or 3) a single employer with CPP, of the marketing representatives involved. Instead, it appears that CPP is the employer of these employees.

Based on the foregoing, I find that the following employees constitute an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time marketing representatives employed by Community Premier Plus, Inc., at the premises of Presbyterian Hospital. ⁸

Excluded: All other employees, and guards, professional employees, and supervisors as defined by the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time⁹ and place set forth in

⁸ As established above, CPP is not an acute health care facility and therefore the Health Care Rules regarding units do not apply here.

the notice of election¹⁰ to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit were employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.¹¹ Those eligible shall vote whether they desire to be represented for collective

⁹ Pursuant to Section 101.21 (d) of the Board's Statements of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this decision.

¹⁰ The Board has adopted a rule requiring that election notices be posted by an employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(a) of the Board's Rules. In addition, the Board has held that Section 103.20 (c) of the Board's Rules requires that an employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB No. 52 (1995).

¹¹ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on or before **June 29, 2000**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

bargaining purposes by New York's Health and Human Service Union, 1199/SEIU, AFL-CIO.¹²

Dated at New York, New York,
June 22, 2000

(s) *Elbert F. Tellem*
Elbert F. Tellem
Acting Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

Code: 177-1633-5075
177-1650

¹² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by no later than **July 6, 2000**.